

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MY CHOICE SOFTWARE, LLC, and
NATHAN MUMME,

Defendants.

CASE NO. C18-0608-JCC

ORDER

This matter comes before the Court on Plaintiff Microsoft Corporation's first motion to strike or in the alternative dismiss for failure to state a claim (Dkt. No. 98), Plaintiff's second motion to strike or in the alternative dismiss for failure to state a claim (Dkt. No. 107), Defendant My Choice Software, LLC's ("MCS") motion to file a third-party complaint (Dkt. No. 112), Defendant Nathan Mumme's ("Mr. Mumme") motion to dismiss for lack of personal jurisdiction (Dkt. No. 115), and MCS and Mr. Mumme's (collectively "Defendants") motion to strike Plaintiff's praecipe (Dkt. No. 129).

I. BACKGROUND

The Court will provide a detailed summary of this action's factual and procedural background to give context to its rulings on the parties' pending motions.

On December 9, 2016, Plaintiff initiated this lawsuit against Defendants in the Central

1 District of California. (Dkt. No. 1.) Plaintiff alleges that Defendants “advertised, marketed,
2 copied, offered and/or distributed unauthorized, infringing and/or illicit Microsoft software and
3 components after being previously sued by Microsoft for the infringement of Microsoft’s
4 copyrights, trademarks and/or service mark and after entering into a permanent injunction.” (*Id.*
5 at 7; *see also* Dkt. No. 34.) Plaintiff’s initial complaint asserted eight causes of action against
6 Defendants regarding their alleged trademark and copyright infringement of Plaintiff’s software.
7 (Dkt. No. 1 at 9–18.)

8 On April 6, 2017, Plaintiff filed its first amended complaint, which added allegations and
9 claims regarding Plaintiff’s Managed Partner Network (“MPN”) in which MCS was a
10 participant. (Dkt. No. 20.) Pursuant to the parties’ MPN Agreement, Plaintiff made incentive
11 payments to MCS for its sale of qualifying Microsoft software and licenses. (*Id.*; *see also* Dkt.
12 No. 100-1 at 60–93.) In the first amended complaint, Plaintiff alleged that Defendants were
13 selling Microsoft Office 365 subscriptions to customers without the customers’ knowledge in
14 order to “increase the amount of the MPN incentive payments they were receiving from
15 Microsoft.” (Dkt. No. 20 at 14.) Plaintiff asserted that Defendants’ conduct regarding the MPN
16 agreement constituted unlawful, unfair, or fraudulent business practices in violation of California
17 Business & Professions Code § 17200, and resulted in unjust enrichment. (*Id.* at 23–24.)¹

18 On May 12, 2017, Defendants moved to dismiss the first amended complaint or in the
19 alternative to compel a more definite statement. (Dkt. No. 27.) On October 10, 2017, the
20 Honorable David O. Carter, United States District Judge, granted in part and denied in part
21 Defendants’ motion, and dismissed one of Plaintiff’s 11 causes of action without prejudice and
22 with leave to amend. (Dkt. No. 33 at 14.)

23 On October 30, 2017, Plaintiff timely filed a second amended complaint, which alleged
24 the same causes of action as the first amended complaint. (Dkt. No. 34.) After filing their
25

26 ¹ The first amended complaint asserted 11 causes of action. (*See* Dkt. No. 20.)

1 answer, Defendants filed counterclaims against Plaintiff. (Dkt. No. 39.)² Defendants alleged that
2 Plaintiff wrongfully terminated them from the MPN and withheld incentive payments that were
3 owing under the MPN Agreement. (*See id.*) Defendants additionally asserted that Plaintiff had
4 misrepresented that its approved vendors sold authentic software, which MCS purchased had and
5 re-sold. (*Id.*)

6 On December 18, 2017, Plaintiff filed a motion to sever Defendants' counterclaims and
7 transfer them to the Western District of Washington. (Dkt. No. 41 at 2.) Plaintiff argued that
8 adjudicating the counterclaims required interpretation of the MPN Agreement, which contained a
9 forum selection clause placing exclusive jurisdiction over such claims in the Western District of
10 Washington. (Dkt. No. 41-1 at 16.) In the alternative, Plaintiff asked the Court to dismiss the
11 counterclaims for failure to state a claim. (Dkt. No. 41 at 2.)

12 While Plaintiff's motion was pending, Judge Carter issued a scheduling order, which
13 established March 26, 2018 as the deadline for pleading amendments and third-party practice.
14 (Dkt. No. 50 at 2.) On March 26, 2018, Defendants filed a motion for leave to file a third-party
15 complaint against Flex-Tech Solutions, Inc., Southern Technology Solutions, Inc., Teri Reeves,
16 Thomas Reeves, and 10 Doe defendants. (Dkt. No. 62.) Defendants asserted that the proposed
17 third-party defendants sold them the allegedly infringing software and would therefore be liable
18 to indemnify Defendants in the event a judgment was entered against them. (Dkt. No. 62-1 at 8.)³

19 On April 23, 2018, Judge Carter held a hearing on Plaintiff's motion to sever and transfer

20 ² Defendants asserted the following counterclaims: (1) breach of contract, (2) breach of
21 the covenant of good faith and fair dealing, (3) intentional misrepresentation, (4) negligent
22 misrepresentation, (5) intentional interference with prospective advantage, (6) tortious
23 interference with prospective advantage, (7) unfair competition in violation of California
Business & Professions Code § 17200, and (8) false advertising under both federal and
California law. (Dkt. No. 39 at 6–19.)

24 ³ In addition to indemnification, Defendants asserted claims for (1) tortious interference
25 with contractual relations, (2) intentional interference with prospective economic relations, (3)
26 negligent interference with prospective economic relations, (4) fraudulent misrepresentation, (5)
fraudulent concealment, (6) equitable indemnity, and (7) equitable contribution. (Dkt. No. 62-1
at 7–13.)

1 Defendants' counterclaims. (Dkt. No. 70.) Judge Carter stated that he was "inclined to transfer
2 the entire action" to the Western District of Washington and directed Plaintiff to file a request to
3 transfer the entire action. (*Id.*) On April 25, 2018, Judge Carter issued an order transferring the
4 case to the Western District of Washington. (Dkt. No. 72.)

5 Following transfer, the case was assigned to the Honorable Richard A. Jones, United
6 States District Judge. (Dkt. No. 76.) The parties then filed a stipulation to re-note Plaintiff's
7 motion to dismiss Defendants' counterclaims and Defendants' motion for leave to file a third-
8 party complaint, which Judge Jones adopted on May 3, 2018. (*See* Dkt. No. 82.) On June 6,
9 2018, Mr. Mumme voluntarily dismissed his counterclaims against Plaintiff pursuant to Federal
10 Rule of Civil Procedure 41(a)(1). (Dkt. No. 94.)

11 On September 12, 2018, Judge Jones denied Defendants' motion for leave to file a third-
12 party complaint. (Dkt. No. 95.) Judge Jones ruled that Defendants' proposed third-party
13 complaint would "complicate an already dense record, further prolong trial and pretrial
14 proceedings, and introduce extraneous claims and potential cross claims." (*Id.* at 3.) Judge Jones
15 concluded that there was "no reason to inject further delays by adding a host of out-of-state
16 defendants and separate claims that are not germane to the present dispute." (*Id.* at 4.)

17 On September 26, 2018, Judge Jones granted Plaintiff's motion to dismiss MCS's
18 counterclaims. (Dkt. No. 96.) Judge Jones ruled that the counterclaims failed to state a claim
19 upon which relief could be granted. (*Id.* at 5.) Although expressing skepticism that MCS could
20 "overcome certain factual and legal deficiencies," Judge Jones granted MCS "one opportunity to
21 amend" its counterclaims to cure the identified deficiencies. (*Id.* at 20.)

22 On October 12, 2018, MCS timely filed its first amended counterclaim. (Dkt. No. 97.)
23 The first amended counterclaim asserted several new theories of liability against Plaintiff. (*See*
24 *generally id.*) In addition to its initial claims related to the MPN Agreement, MCS asserted that it
25 had entered into a "Microsoft Cloud Solution Reseller Agreement" (the "Reseller Agreement")
26 with Synnex Corporation ("Synnex"), who is Microsoft's "preferred and only cost-effective

1 distributor for Office 365 to small businesses like [My Choice].” (*Id.* at 3–5.) MCS asserted that
2 the Reseller Agreement enabled it “to order Office 365 licenses from Synnex,” and that it entered
3 into the Reseller Agreement because its sales of Office 365 licenses qualified “for incentive
4 payments from Microsoft through the MPN.” (*Id.* at 5.) MCS further stated that “[t]he wrongful
5 distribution practices allegations in [Plaintiff’s] Second Amended Complaint are based on
6 MCS’s sales of Office 365 licenses made pursuant to and in accordance with the [Reseller
7 Agreement].” (*Id.*)

8 Pursuant to the Reseller Agreement, MCS alleges that it “registered approximately
9 35,000 Office 365 license seats with Synnex.” (*Id.* at 6.) MCS further alleges that Synnex
10 charged it for all registered Office 365 licenses, regardless of whether they were activated or
11 cancelled prior to expiration of a 30-day trial period. (*Id.*) As a result, MCS asserted that Synnex
12 overbilled it for the licenses, in an amount estimated to exceed two million dollars. (*Id.* at 7.)
13 MCS alleged that Synnex was acting as Plaintiff’s agent in entering into and performing under
14 the Reseller Agreement. (*See generally id.*) MCS also alleged that Plaintiff terminated the MPN
15 agreement while still owing MCS approximately \$140,000 in incentive payments. (*Id.* at 8.) The
16 first amended counterclaim asserted the following causes of action against Plaintiff : (1) breach
17 of the Reseller Agreement and the MPN Agreement, (2) violation of the duty of good faith and
18 fair dealing with regard to the Reseller Agreement and the MPN Agreement, (3) unjust
19 enrichment, (4) conversion, (5) an accounting, and (6) imposition of a constructive trust. (*Id.* at
20 9–13.)

21 On October 25, 2018, Plaintiff filed a motion to strike or in the alternative dismiss MCS’s
22 amended counterclaim. (Dkt. No. 98.) Plaintiff asserts that the amended counterclaim should be
23 struck because MCS exceeded the leave that Judge Jones granted to amend. (*Id.* at 5.)
24 Alternatively, Plaintiff asserts that MCS’s counterclaims fail to state a claim upon which relief
25 can be granted because Plaintiff was not a party to the Reseller Agreement whether as a
26 signatory, or as Synnex’s principal. (*Id.* at 6.)

1 On November 15, 2018, MCS filed a second amended counterclaim that alleges the same
2 causes of action, but includes additional allegations regarding its claim that Synnex was acting as
3 Plaintiff's agent. (*Compare* Dkt. No. 97, *with* Dkt. No. 103.) On November 29, 2018, Plaintiff
4 filed a second motion to strike or in the alternative dismiss MCS's counterclaims. (Dkt. No.
5 107.) Plaintiff asserts that MCS's second amended counterclaim is both untimely and in violation
6 of Judge Jones' prior order. (*Id.* at 6–7.) Plaintiff again argues that the counterclaims should also
7 be dismissed for failure to state a claim. (*Id.* at 7.)

8 On January 23, 2019, MCS filed a motion for leave to file a third-party complaint. (Dkt.
9 No. 112.) MCS's proposed third-party complaint seeks to implead Synnex and assert the same
10 causes of action for breach of the Reseller Agreement that it alleges against Plaintiff in its second
11 amended counterclaim. (*Compare* Dkt. No. 103, *with* Dkt. No. 112-1.) Plaintiff objects to MCS's
12 motion to file the third-party complaint. (Dkt. No. 118.)

13 On January 24, 2019, Mr. Mumme filed a motion to dismiss for lack of personal
14 jurisdiction. (Dkt. No. 115.) Mr. Mumme argues that he is not subject to specific jurisdiction
15 because “he has not purposely directed any of his activities toward Washington, [Plaintiff's]
16 claims do not arise out of [his] forum-related activities, and exercising personal jurisdiction over
17 [him] in Washington would not comport with fair play and substantial justice.” (*Id.* at 2.) Mr.
18 Mumme additionally asserts that Plaintiff has not adequately alleged that he is MCS's alter ego
19 for purposes of establishing personal jurisdiction. (*Id.*)

20 On February 11, 2019, Plaintiff filed a response in opposition to Mr. Mumme's motion to
21 dismiss. (Dkt. No. 118.) On March 8, 2019, Plaintiff filed a praecipe seeking to supplement its
22 opposition with documents it had subsequently obtained through a third-party subpoena. (Dkt.
23 No. 123.) The subpoenaed documents are emails between Mr. Mumme and a Washington-based
24 vendor of Plaintiff's software that purport to show that Mr. Mumme maintains contacts with the
25 forum. (*Id.*) On March 13, 2019, Defendants filed a motion to strike Plaintiff's praecipe, arguing
26 that it was both improperly filed and prejudicial. (Dkt. No. 129.)

1 On April 15, 2019, prior to Judge Jones ruling on any of the parties' pending motions
2 (Dkt. Nos. 98, 107, 112, 115, 129), the case was reassigned to this Court.

3 **II. DISCUSSION**

4 **A. Plaintiff's First Motion to Strike or in the Alternative to Dismiss**

5 Plaintiff's first motion to strike or, in the alternative, dismiss MCS's first amended
6 counterclaim (Dkt. No. 98) is DENIED as moot. MCS's second amended counterclaim was
7 properly filed as a matter of course. *See* Fed. R. Civ. P. 15(a); *see also Ramirez v. Cty. of San*
8 *Bernardino*, 806 F.3d 1002, 1007 (9th Cir. 2015) (holding that Rule 15 "does not mandate that
9 the matter of course amendment under 15(a)(1) be exhausted before an amendment may be made
10 under 15(a)(2), nor . . . that the ability to amend under 15(a)(1) is exhausted or waived once a
11 15(a)(2) amendment is made"). MCS's first amended counterclaim was filed pursuant to Judge
12 Jones' order granting leave to amend. (Dkt. No. 96.) Prior to MCS's second amended
13 counterclaim, MCS had not amended its counterclaim as a matter of course. After Plaintiff filed
14 its first motion to strike or in the alternative to dismiss, MCS timely and properly filed its second
15 amended counterclaim as a matter of course. Therefore, MCS's second amended counterclaim
16 rendered Plaintiff's first motion to strike or in the alternative to dismiss moot. *See Ramirez*, 806
17 F.3d at 1008 ("Because the [d]efendants' motion to dismiss targeted the [p]laintiff's First
18 Amended Complaint, which was no longer in effect, we conclude that the motion to dismiss
19 should have been deemed moot before the district court granted it.").

20 **B. Plaintiff's Second Motion to Strike or in the Alternative to Dismiss**

21 Plaintiff's second motion to strike or in the alternative to dismiss the second amended
22 counterclaim is GRANTED in part and DENIED in part. Plaintiff's motion to strike is DENIED
23 because MCS's second amended counterclaim was properly filed as a matter of course under
24 Rule 15. *See* Fed. R. Civ. P. 15(a); *supra* Part II.A. Plaintiff's motion to dismiss the second
25 amended counterclaim is GRANTED with regard to MCS's counterclaims that are based on the
26 Reseller Agreement and DENIED as to MCS's counterclaims that are based on the MPN

1 Agreement.

2 1. Reseller Agreement

3 MCS has not plausibly alleged that Plaintiff was a party to the Reseller Agreement. *See*
4 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 (2007) (holding that a complaint must “state a
5 claim to relief that is plausible on its face”).⁴ On its face, the Reseller Agreement is clearly a
6 contract between non-party Synnex, a distributor of Microsoft software, and MCS, a Reseller of
7 Microsoft software. (*See* Dkt. No. 109-1 at 5–20) (“Subject to the terms and conditions of this
8 Agreement, SYNEX hereby appoints [MCS] as a nonexclusive reseller of the Services in the
9 Territory and grants to [MCS] a nontransferable and nonexclusive license during the term of this
10 Agreement to distribute the Services in the Territory.”).

11 Although MCS asserts that Plaintiff is a party to the Reseller Agreement under an agency
12 theory, the second amended counterclaim does not allege facts that allow the Court to draw a
13 reasonable inference that Synnex was acting as Plaintiff’s agent, either expressly or ostensibly, in
14 entering into or performing under the Reseller Agreement. *See* Cal. Civ. Code § 2298 (“An
15 agency is either actual or ostensible”); *see also Garlock Sealing Techs., LLC v. NAK Sealing*
16 *Techs. Corp.*, 148 Cal. App. 4th 937, 964 (2007) (describing the requirements for pleading an
17 actual or ostensible agency relationship under California law). The second amended
18 counterclaim contains only conclusory allegations that Plaintiff expressly authorized Synnex to

19 ⁴ The Court considers the Reseller Agreement (Dkt. No. 109-1 at 5–20) under the
20 incorporation by reference doctrine. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)
21 (alteration in original) (noting that, on a motion to dismiss, district courts may consider
22 documents “whose contents are alleged in a complaint and whose authenticity no party
23 questions, but which are not physically attached to the [plaintiff’s] pleading.”). The second
24 amended counterclaim repeatedly refers to the Reseller Agreement, a copy of which defense
25 counsel provided to Plaintiff at its request. (Dkt. No. 109-1 at 2–3, 5–20.) The Court does not
26 consider the version of the Reseller Agreement Plaintiff obtained independently from Synnex’s
website (*id.* at 21–50), or take judicial notice of any of the other materials Plaintiff requests. (*See*
Dkt. Nos. 107 at 9, 109-1 at 51–58.)

1 enter into the Reseller Agreement with MCS on Plaintiff's behalf. (*See generally* Dkt. No. 103.)
2 Similarly, MCS does not plausibly allege that Plaintiff held Synnex out as its agent with regard
3 to the Reseller Agreement. (*Id.*)

4 Because the second amended complaint fails to plausibly allege that Plaintiff was a party
5 to the Reseller Agreement, the Court DISMISSES all of MCS's counterclaims that are predicated
6 on the Reseller Agreement without leave to amend.⁵ The Court concludes that further
7 amendment would be futile, as MCS has amended its counterclaims twice and been unable to
8 successfully allege plausible claims regarding the Reseller Agreement. *Metzler Inv. GMBH v.*
9 *Corinthian Coll., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008) ("[T]he district court's discretion to
10 deny leave to amend is particularly broad where plaintiff has previously amended the
11 complaint.").

12 2. MPN Agreement

13 MCS has plausibly alleged that Plaintiff breached the MPN Agreement by failing to pay
14 MCS incentive payments "for sales made for a time period that is almost a year prior to the MPN
15 Agreement's cancellation." (Dkt. No. 103 at 10.) The second amended counterclaim plausibly
16 alleges that a valid contract existed, which required Plaintiff to pay MCS certain incentive
17 payments, and that Plaintiff breached this duty by withholding incentive payments owed to MCS
18 prior to the termination of the MPN Agreement. (*Id.* at 10–13; *see also* Dkt. No. 100-1 at 60–93.)
19 To the extent Plaintiff argues that it properly withheld incentive payments because MCS
20 breached the MPN Agreement, MCS has sufficiently alleged that it did not breach the
21 Agreement. In addition to its breach of contract claim (third cause of action), MCS has plausibly
22 alleged that Plaintiff's withholding of incentive payments constituted a breach of the covenant of
23 good faith and fair dealing (fourth cause of action), unjust enrichment (fifth cause of action), and
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25 ⁵ MCS's causes of action 1, 2, and 7 are DISMISSED in their entirety, as they are based
26 solely on allegations regarding the Reseller Agreement. (*See* Dkt. No. 103 at 10–12, 15.) MCS's
causes of action 5, 6, and 8 are also DISMISSED to the extent they are based on allegations
regarding the Reseller Agreement. (*See generally* Dkt. No. 103.)

entitles MCS to an accounting (sixth cause of action) and imposition of a constructive trust (eighth cause of action). In accordance with the Court’s ruling, Plaintiff shall file its answer to MCS’s second amended counterclaim no later than 14 days from the issuance of this order.

C. MCS’s Motion for Leave to File a Third-Party Complaint

MCS’s motion for leave to file a third-party complaint (Dkt. No. 112) is DENIED. First, MCS has not shown that Synnex’s liability “is in some way dependent on the outcome of the main claim and is secondary or derivative thereto.” *Stewart v. Am. Int’l Oil & Gas Co.*, 845 F.2d 196, 199 (9th Cir. 1988). MCS’s proposed third-party claims against Synnex are unrelated to Plaintiff’s infringement claims against Defendants, and are, at best, tangentially related to Plaintiff’s claims that Defendants were selling Office 365 subscriptions to customers without the customers’ knowledge. (*Compare* Dkt. No. 34 at 13–15, *with* Dkt. No. 112-1 at 5–12.)

Second, granting impleader at this stage of the litigation would not effectuate the purpose of Federal Rule of Civil Procedure 14. Allowing MCS to join Synnex to this lawsuit would complicate the issues at trial and further delay what has already been a significantly drawn out case. *See Irwin v. Mascott*, 94 F. Supp. 2d 1052, 1056 (N.D. Cal. 2000) (citing factors courts typically consider to determine whether impleader should be granted). Moreover, MCS’s motion for impleader is not timely—it was filed 10 months after Judge Carter’s deadline for third-party practice, and 3 months after Judge Jones denied Defendants’ motion to implead a different third-party. (Dkt. Nos. 50, 95.) The Court sees no reason to reverse course at this juncture, and will not entertain any future motions by either party regarding pleading amendments or third-party practice.

D. Mr. Mumme’s Motion to Dismiss for Lack of Personal Jurisdiction

Mr. Mumme’s motion to dismiss for lack of personal jurisdiction (Dkt. No. 115) is DENIED because Mr. Mumme waived the defense through his litigation conduct. *See Peterson v. Highland Music, Inc.*, 140 F.3d 1313, 1318 (9th Cir. 1998) (noting that the personal jurisdiction defense “may be waived as a result of the course of conduct pursued by a party

1 during litigation”). In opposing Plaintiff’s motion to sever and transfer Defendants’
2 counterclaims to the Western District of Washington, Mr. Mumme did not argue that this Court
3 would lack personal jurisdiction. (*See* Dkt. Nos. 42.) Nor did Mr. Mumme raise the issue of
4 personal jurisdiction when Judge Carter announced that he would be transferring the case to this
5 District. (*See* Dkt. Nos. 70–72, 115.)

6 When the case was transferred, Mr. Mumme stipulated to Judge Jones ruling on
7 Plaintiff’s motion to dismiss Defendants’ counterclaims and Defendants’ motion to file a third-
8 party complaint. (Dkt. No. 82.) Although Mr. Mumme emphasizes that he voluntarily dismissed
9 his counterclaims in June 2018, he did so a month after he stipulated to Judge Jones ruling on his
10 pending impleader motion. Moreover, Mr. Mumme did not raise the personal jurisdiction issue
11 until almost eight months after dismissing his counterclaims. In the meantime, he allowed Judge
12 Jones to rule on his pending motion and he participated in discovery. (*See* Dkt. Nos. 96, 123-1 at
13 321–46.)

14 Mr. Mumme’s failure to challenge jurisdiction prior to transfer, assent to Judge Jones
15 ruling on his pending motion, participation in discovery, and significant delay in filing his
16 motion to dismiss (and not until after receiving an adverse ruling on his impleader motion), strike
17 the Court as the exact kind of “deliberate, strategic behavior” and “sand-bagging” that the Ninth
18 Circuit has suggested is sufficient to waive the personal jurisdiction defense. *Peterson*, 140 F.3d
19 at 1318.⁶

21 ⁶ Even if the Court ruled that Mr. Mumme had not waived the personal jurisdiction
22 defense, Plaintiff has also made a *prima facie* showing that Mr. Mumme is subject to specific
23 personal jurisdiction in Washington. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d
24 797, 800 (9th Cir. 2004) (holding that where a motion to dismiss challenging personal
25 jurisdiction is decided without a hearing, plaintiff need only make a *prima facie* showing of
26 jurisdictional facts). Plaintiff has presented evidence that Mr. Mumme personally and
purposefully conducted MCS’s business activities with thousands of customers and at least one
software vendor in Washington. (*See* Dkt. Nos. 115-1, 123-1); *see Wash. Shoe Co. v. A–Z*
Sporting Goods Inc., 704 F.3d 668, 672 (9th Cir. 2012). Further, Plaintiff’s alleged infringement
injuries arise out Mr. Mumme’s contacts with Washington and caused Plaintiff to be harmed in

1 **E. Defendants’ Motion to Strike Praecipe**

2 Defendants’ motion to strike praecipe (Dkt. No. 129) is DENIED. Under this District’s
3 Local Civil Rules, a party may seek to add an additional document in support of a previous filing
4 if it files a praecipe that sets forth “why the document was not included with the original filing
5 and reference[s] the original filing by docket number.” W.D. Wash. Local Civ. R. 7(m).
6 Plaintiff’s praecipe (Dkt. No. 128) complies with this standard. Plaintiff’s praecipe supplements
7 its opposition to Mr. Mumme’s motion to dismiss with relevant documents that were obtained
8 through a subpoena after Plaintiff filed its opposition. (Dkt. No. 131.) Plaintiff explains why the
9 documents were not included in its opposition and references the original filing by docket
10 number. (*Id.*) Further, the Court finds that its consideration of the praecipe is not prejudicial to
11 Mr. Mumme because the additional documents do not raise new arguments but simply support
12 the arguments Plaintiff made in its opposition to the motion to dismiss. *See Liberty Mut. Fire Ins.*
13 *Co. v. City of Seattle*, Case No. C15-1039-JCC, Dkt. No. 74 at 1 n.1 (W.D. Wash. 2016)
14 (denying motion to strike a document that was added after briefing had closed because the
15 document did not raise a new argument).

16 **III. CONCLUSION**

17 For the foregoing reasons:

18 1. Plaintiff’s first motion to strike, or in the alternative, to dismiss MCS’s first amended
19 counterclaim (Dkt. No. 98) is DENIED as moot.

20 2. Plaintiff’s second motion to strike, or in the alternative, to dismiss MCS’s second
21 amended counterclaim (Dkt. No. 107) is GRANTED in part and DENIED in part. Plaintiff’s
22 motion to strike is DENIED. Plaintiff’s motion to dismiss is GRANTED as to MCS’s
23 counterclaims based on allegations regarding the Reseller Agreement. Those counterclaims are
24 DISMISSED without leave to amend. Plaintiff’s motion to dismiss is DENIED as to MCS’s

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26 Washington. Finally, Mr. Mumme has not demonstrated the Court’s exercise of jurisdiction
would be unreasonable.

1 counterclaims based on allegations regarding the MPN Agreement. In accordance with the
2 Court's order, Plaintiff shall file its answer to the second amended counterclaim no later than 14
3 days from the issuance of this order.

4 3. MCS's motion for leave to file a third-party complaint (Dkt. No. 112) is DENIED.

5 4. Mr. Mumme's motion to dismiss for lack of personal jurisdiction (Dkt. No. 115) is
6 DENIED.

7 5. Defendants' motion to strike Plaintiff's praecipe (Dkt. No. 129) is DENIED.

8 6. The parties shall appear before the Court on Tuesday, June 4, 2019 at 9:00 a.m.
9 for a status conference to enter a scheduling order pursuant to Federal Rule of Civil Procedure
10 16.

11 DATED this 15th day of May 2019.

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15 John C. Coughenour
16 UNITED STATES DISTRICT JUDGE
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